

**DEVELOPMENT AGREEMENT WITH THE CITY OF SAN ANTONIO, TEXAS and**  
**\_\_\_\_\_, and**  
**BOARD OF DIRECTORS OF**  
**REINVESTMENT ZONE NUMBER \_\_\_\_\_, CITY OF SAN ANTONIO, TEXAS**  
**\_\_\_\_\_, 20\_\_**

This Development Agreement, pursuant to Ordinance No. \_\_\_\_\_, passed and approved on \_\_\_\_\_, is entered into by and between the **CITY OF SAN ANTONIO**, a Texas municipal corporation of Bexar County, Texas (hereinafter called "**CITY**"); \_\_\_\_\_, an entity organized in the State of \_\_\_\_\_ (hereinafter referred to as "**DEVELOPER**"); and **BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER \_\_\_\_\_, CITY OF SAN ANTONIO, TEXAS**, a tax increment financing zone (hereinafter called "**BOARD**");

**WITNESSETH:**

**WHEREAS**, **CITY** recognizes the importance of its continued role in economic development; and

**WHEREAS**, by Ordinance Number \_\_\_\_\_, dated \_\_\_\_\_-, pursuant to Chapter 311 of the Texas Tax Code (as amended), (hereinafter called the "**Act**"), **CITY** created Reinvestment Zone Number \_\_\_\_\_ ("**Zone**") in accordance with the Act, to promote development and redevelopment of the Zone Property through the use of tax increment financing, which development and redevelopment would not otherwise occur solely through private investment in the reasonably foreseeable future and established a Board of Directors for the Zone; and

**WHEREAS**, Section 311.002(1) of the Act authorizes the expenditure of funds derived within a reinvestment zone, whether from bond proceeds or other funds, for the payment of expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by a municipality establishing a reinvestment zone, for costs of public works or public improvements in the zone, plus other costs incidental to those expenditures and obligations, consistent with the project plan of the reinvestment zone, which expenditures and monetary obligations constitute project costs, as defined in Section 311.002(1) of the Act ("**Project Costs**"); and

**WHEREAS**, on \_\_\_\_\_-, by a Board Resolution, the **BOARD** adopted and approved a final Project Plan and a final Financing Plan defined hereunder and referred to herein as "**Project Plan**" and "**Financing Plan**" providing for development of Zone Property; and

**WHEREAS**, **CITY** approved the Project and Financing Plan for Zone by Ordinance Number \_\_\_\_\_, on \_\_\_\_\_; and

**WHEREAS**, pursuant to the Act and City of San Antonio Ordinance Number \_\_\_\_\_, dated \_\_\_\_\_, the **BOARD** has authority to enter into agreements as the **BOARD** considers necessary or convenient to implement the Project Plan and Financing Plan and to achieve the purposes of

developing the Zone Property; and

**WHEREAS**, pursuant to said authority above, **BOARD** hereby enters into a binding agreement with **CITY** and **DEVELOPER** for **DEVELOPER** to develop the Zone Property as specified in the Project Plan, Financing Plan and this Agreement; and

**WHEREAS**, **CITY**, by Ordinance Number \_\_\_\_\_, dated \_\_\_\_\_, authorized the City Manager of the City of San Antonio or her designated representative to execute this Agreement on behalf of **CITY**, to bind **CITY** to the terms and conditions of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, obligations, and benefits contained in this Agreement, **CITY**, **BOARD**, and **DEVELOPER** hereby agree as follows:

## **I. DEFINITIONS**

1.1 “**CITY**,” “**BOARD**,” and “**DEVELOPER**” shall have the meanings specified above.

1.2 “Act” shall mean the Tax Increment Financing Act, as defined above and as may be amended from time to time.

1.3 “Agreement” shall mean this document by and among **CITY**, **BOARD** and **DEVELOPER**, which may be amended from time to time, pursuant to the provisions contained herein.

1.4 “Available Tax Increment Funds” for each Participating Taxing Entity shall mean the “Tax Increment” contributed by each Participating Taxing Entity as defined in Section 311.012 (a) of the Act to the fund established and maintained by **CITY** for the purposes of implementing the projects of **ZONE**, less the initial administrative costs of each Participating Taxing Entity for organizing the Zone and the ongoing administrative costs of **CITY** for managing the Zone;

1.5 “City Manager” shall mean the City Manager of **CITY** or her designee.

16 “Completion” shall mean construction of a public improvement in Zone substantially in accordance with the Project Plan and Financing Plan and this Agreement to the extent that the particular improvement can be used and maintained for its intended purpose, as certified by an engineer or other official of **CITY** with responsibility for inspecting and certifying such improvements.

1.7 “Contract Progress Payment Request” shall mean a request, prepared in accordance with the requirements of Exhibit F, for payment due to **DEVELOPER** for successfully completed work on a specific improvement in the Zone in accordance with the Project Plan and the timeline detailed in Exhibit C, the Construction Schedule, accompanied by customary documentation including the name and address of the entity that performed the work, a description of the contract pursuant to which the payment is made, proof of payment or satisfaction, the amount of such payment, the original contract amount, total payments made to date on such contract, an estimate of remaining work to be completed on the specific improvement, the cost of such work, and any customary lien and/or subcontractor releases.

1.8 “CPPR Approval” shall mean a written acknowledgement from **CITY** to **DEVELOPER** that the Contract Progress Payment Request, as defined herein, was completed and submitted correctly, and that

the Contract Progress Payment Request is ready for presentation to **BOARD** for approval and consideration for reimbursement to **DEVELOPER**.

1.9 “Construction Schedule” shall mean the timetable for constructing the improvements specified in the Project Plan, Financing Plan and this Agreement, which timetable is more particularly set forth in Exhibit C, attached hereto and incorporated herein for all purposes and which timetable may be amended from time to time pursuant to the provisions of this Agreement.

1.10 “Effective Date” shall mean the tenth (10<sup>th</sup>) day after passage by the **CITY’s** City Council of the Ordinance authorizing the execution of this Agreement by **CITY**.

1.11 “Financing Plan” shall mean the final Financing Plan as defined in the Act, as approved and as may be amended from time to time by **BOARD** and **CITY**.

1.12 “Guidelines” shall have the meaning specified below.

1.13 “Phase” shall mean a portion of the Project that is being constructed by **DEVELOPER** normally being a set number of units or acres out of the Zone Property being constructed together during a specific timeline.

1.14 “Participating Taxing Entity” shall mean any governmental entity recognized as such by Texas law that is participating in this Project.

1.15 “Project” shall have the meaning specified in paragraph 3.1 of this Agreement, and as more specifically detailed in the Project Plan and Financing Plan as (either or both) may be amended from time to time.

1.16 “Project Costs” shall have the meaning specified above.

1.17 “Project Plan” shall mean the final Project Plan as defined in the Act, as approved and as may be amended from time to time by **BOARD** and **CITY**.

1.18 “Public Infrastructure Improvements” shall have the meaning specified in Paragraph 3.2 of this Agreement, and as more specifically detailed in Exhibit B, the Project Plan and Financing Plan as (either or both) may be amended from time to time.

1.19 “Zone” shall have the meaning specified above.

1.20 “Zone Property ” shall mean the real property subject to the Project Plan and Financing Plan, which is more particularly described in Exhibit A.

Singular and Plural: Words used herein in the singular, where the context so permits, also includes the plural and vice versa, unless otherwise specified.

## II. REPRESENTATIONS

2.1 **NO INCREMENT REVENUE BONDS:** **CITY, BOARD,** and **DEVELOPER** represent that they understand and agree that neither **CITY** nor **BOARD** shall issue any tax increment revenue bonds to cover any costs directly or indirectly related to **DEVELOPER's** improvement of the Zone under this Agreement.

2.2 **CITY** represents to **DEVELOPER** that as of the date hereof **CITY** is a home rule municipality located in Bexar County, Texas, and has authority to carry out the obligations contemplated by this Agreement.

2.3 **BOARD** represents to **DEVELOPER** that as of the date hereof that the Zone is a Tax Increment Reinvestment Zone established by **CITY** pursuant to Ordinance Number \_\_\_\_\_, passed and approved on \_\_\_\_\_, and has authority to carry on the functions and operations contemplated by this Agreement.

2.4 **DEVELOPER** represents to **CITY** and to **BOARD** that **DEVELOPER** is an entity organized in the State of \_\_\_\_\_; that **DEVELOPER** has the authority to enter into this Agreement and to perform the requirements of this Agreement; that **DEVELOPER's** performance under this Agreement shall not violate any applicable judgment, order, law or regulation; that **DEVELOPER's** performance under this Agreement shall not result in the creation of any claim against **CITY** for money or performance, any lien, charge, encumbrance or security interest upon any asset of **CITY** or **BOARD**; that **DEVELOPER** shall have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital; and that **DEVELOPER** owns the Zone Property.

2.5 **CITY, BOARD,** and **DEVELOPER** represent each to the others that the execution, delivery, and performance of this Agreement on its part does not require consent or approval of any person that has not been obtained.

2.6 **CITY** and **BOARD** represent that **DEVELOPER** may rely upon the payments to be made to it out of the Available Tax Increment Funds as specified in this Agreement and that **DEVELOPER** may assign its rights to such payments, either in full or in trust, for the purposes of financing its obligations related to this Agreement, but **DEVELOPER's** right to such payments is subject to the other limitations of this Agreement. Notwithstanding the forgoing, the **CITY** will issue a check or other form of payment made payable to the **DEVELOPER** only.

2.7 **CITY, BOARD,** and **DEVELOPER** represent each to the others that it shall make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires its continued cooperation.

2.8 **CITY, BOARD,** and **DEVELOPER** represent that they understand and agree that even after the Zone terminates, **DEVELOPER** shall diligently work to successfully complete any and all required improvements that are not completed before Zone terminates. Such completion shall be at no additional cost to **CITY, BOARD,** or any other Participating Taxing Entity.

2.9 **CITY, BOARD,** and **DEVELOPER** represent that they understand and agree that this Agreement shall have no force or effect unless and until the applicable Interlocal Agreements for the Project are executed among **CITY,** the respective Participating Taxing Entities and **BOARD.**

2.10 **DEVELOPER** represents that it understands that any contributions made by **DEVELOPER** in anticipation of reimbursement from tax increments shall not be, nor construed to be, financial obligations of **CITY**, or other Participating Taxing Entity, or **BOARD**. **DEVELOPER** shall bear all risks associated with reimbursement, including, but not limited to: incorrect estimates of tax increment, changes in tax rates or tax collections, changes in state law or interpretations thereof, changes in market or economic conditions impacting the project, changes in interest rates or capital markets, changes in development code requirements, default by tenants, unanticipated effects covered under legal doctrine of *force majeure*, and/or other unanticipated factors.

### III. THE PROJECT

3.1 **The Project.** The Project shall constitute and include the design, construction, assembly, installation and implementation of an urban residential development with single-family homes, streets and approaches, drainage system, sewer system, water system, sidewalks, street lights, traffic signal devices, to be constructed by **DEVELOPER** on an approximately \_\_\_\_\_ acres out of the Zone Property, also known as the \_\_\_\_\_ Development Project.

3.2 **The Public Infrastructure Improvements.** The Public Infrastructure Improvements shall consist of the following items: street excavation and installation, curbing, sidewalks, street lighting, traffic signal devices, storm sewers, drainage detention, utilities, landscaping and other public improvements authorized by the Act. The Public Infrastructure Improvements are more particularly set forth in Exhibit B.

3.3 **Construction of Public Infrastructure Improvements.** Public Infrastructure Improvements financed through Available Tax Increment Funds shall be publicly bid in compliance with Chapter 252 of the Local Government Code, use prevailing wages, and be constructed by or on behalf of **DEVELOPER**, in compliance with all applicable law *unless*: (1) Available Tax Increments Funds go toward financing 30 percent or less of the cost for a specific public improvement, in compliance with Chapter 212 of the Local Government Code; and (2) such public improvement is not a building of any sort. Should **DEVELOPER** not publicly bid a Public Infrastructure Improvement, **DEVELOPER** must obtain written approval by **CITY** in order to be eligible for reimbursement of those Project Costs not publicly bid pursuant to the thirty percent (30%) regulations set forth in Chapters 252 and 212 of the Local Government Code.

3.4 **Financing.** The cost of the Public Infrastructure Improvements and all other improvement expenses associated with the Project shall be through the use of **DEVELOPER's** own capital or through commercial or private construction loans/lines of credit secured solely by **DEVELOPER**. **DEVELOPER** may use any or part of the Zone Property as collateral for the construction loan or loans as required for the financing of the Project; however, no property with a lien still attached may be offered to **CITY** for dedication. **CITY** and **BOARD** pledge to use Available Tax Increment Funds, up to the maximum amount provided herein, to reimburse **DEVELOPER** for Project Costs it has expended. **THESE AVAILABLE TAX INCREMENT FUND PAYMENTS MADE TO DEVELOPER ARE NOT INTENDED TO REIMBURSE DEVELOPER FOR ALL OF ITS COSTS INCURRED IN CONNECTION WITH PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT.**

3.5 **Reimbursement.** The parties hereto agree that neither **CITY** nor **BOARD** can guarantee that

those available Tax Increment Funds shall completely reimburse **DEVELOPER**, but that those Available Tax Increment Funds shall constitute the total reimbursement to **DEVELOPER** for the construction of the Public Infrastructure Improvements.

#### IV. DUTIES AND OBLIGATIONS OF DEVELOPER

4.1 **DEVELOPER** shall comply with all applicable provisions of the Tax Increment Financing (TIF) and Reinvestment Zone Guidelines and Criteria ("Guidelines") as passed and approved by City Council of the City of San Antonio, in effect at the time of the creation of the Zone. In the event of a conflict between the Guidelines and this Agreement, the terms of this Agreement shall control.

4.2 Subject to Article VI. Compensation to Developer, **DEVELOPER** agrees to complete, or cause to be completed, the improvements described in the Project Plan, Financing Plan and this Agreement. **DEVELOPER** agrees to provide, or cause to be provided, all materials, labor, and services for completing the Project. **DEVELOPER** also agrees to obtain or cause to be obtained, all necessary permits and approvals from **CITY** and/or all other governmental agencies having jurisdiction over the construction of improvements to the Zone Property.

4.3 **DEVELOPER** shall prepare, or cause to be prepared plans and specifications for the Public Infrastructure Improvements in a Phase prior to starting any construction in said Phase. **DEVELOPER** shall not commence any construction on the Project until the plans and specifications for a Phase have been approved in writing by the appropriate department of **CITY**. For purposes of this Section, letters of certification or acceptance issued by the **CITY** or an affiliated utility entity shall constitute written approval of the **CITY**.

4.4 **DEVELOPER** shall, prior to beginning construction on any Phase of the Project, cause its general contractor or general contractors to obtain a payment and performance bond in an amount sufficient to cover completion of the Public Infrastructure Improvements for that Phase in their respective contracts. **DEVELOPER** shall obtain said bond in the event the general contractor or general contractors fail to procure said bond.

4.5 **DEVELOPER** agrees to supervise the construction of the Project and cause the construction to be performed substantially in accordance with the Project Plan, Financing Plan and the plans and specifications approved by the appropriate department of **CITY** and **BOARD**. **DEVELOPER** also agrees to provide periodic reports of such construction to **CITY** and to **BOARD** upon reasonable request.

4.6 **DEVELOPER** shall be responsible for paying, or causing to be paid, to **CITY** and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project.

4.7 **DEVELOPER** agrees to commence and complete the Project in accordance with the Construction Schedule. If substantial completion of the Project is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, fire or other casualty, court injunction, necessary condemnation proceedings, interference by third parties, or any circumstances reasonably beyond **DEVELOPER's** control, then at **CITY's** reasonable discretion, the deadlines set forth in the Construction Schedule shall be extended by the period of each such delay.

4.8 With respect to Public Infrastructure Improvements, **DEVELOPER** shall make a good faith effort to comply with **CITY's** policy regarding the participation of business enterprises eligible as Small, Minority or Women-owned Business Enterprises in subcontracting any of the construction work required to be performed under the Project Plan, Financing Plan or this Agreement. Upon **DEVELOPER's** request, **CITY** shall provide **DEVELOPER** a list of those business enterprises certified by **CITY** as eligible Small, Minority or Women-owned Business Enterprises. **DEVELOPER** shall maintain records showing: (i) its contracts, supply agreements, and services agreements with and to Small, Minority or Women-owned Business Enterprises, (ii) specify its efforts to identify and award contracts to business enterprises that are Small, Minority or women-owned Business Enterprises, and (iii) provide reports of its efforts under this Paragraph to **CITY**, in a form and manner **CITY** may reasonably prescribe, at least annually during construction of the Project and upon completion of the Project.

4.9 **DEVELOPER** shall comply with the tree preservation ordinance, City of San Antonio Ordinance No. 85262, passed and approved by the City Council of **CITY** on December 5, 1996, and as may be amended.

4.10 **DEVELOPER** shall cause to be rendered any and all residential buildings and commercial buildings to the Bexar County Appraisal District before December 31 of each year of this Agreement if the buildings were completed prior to said December 31.

4.11 **DEVELOPER** shall, at its own cost and expense, maintain or cause to be maintained, the Public Infrastructure Improvements and all the other public improvements until acceptance by **CITY**, as evidenced by written acceptance by the appropriate **CITY** administrator, and for one year thereafter. After the expiration of one (1) year after such acceptance, maintenance of the Public Infrastructure Improvements shall be the responsibility of **CITY**. **DEVELOPER**, its agents, employees, and contractors will not interfere with reasonable use of all the Public Infrastructure Improvements by the general public, except for drainage retention improvements. **DEVELOPER** shall dedicate the Public Infrastructure Improvements to the appropriate Participating Taxing Entity (as determined by **CITY**), at no additional cost or expense to **CITY** or any other Participating Taxing Entity within sixty (60) days after completion and acceptance of the improvements.

4.12 **DEVELOPER** shall pay monthly rates and charges for all utilities (such as water, electricity, and sewer services) used by **DEVELOPER** in regard to the development of the Zone Property for all areas owned by **DEVELOPER** during construction of the Project, and for so long as **DEVELOPER** owns those areas. Projects within the Zone shall be subject to Section 35.5001 et seq. of the San Antonio City Code and shall not be prohibited from applying for the benefits of any impact fee credits allowed by that Section.

4.13 **DEVELOPER** shall cooperate with **CITY** and **BOARD** in providing all necessary information to **CITY** and to **BOARD** in order to assist **CITY** and **BOARD** in complying with this Agreement.

4.14 **DEVELOPER** shall submit written annual reports, starting no later than thirty (30) days following the end of the fiscal year in which the Zone was created, and thereafter through the duration of the Project, on its construction progress and construction expenses to **CITY** and **BOARD**.

4.15 **DEVELOPER** shall diligently work to complete successfully any and all required improvements

that are not completed before the Zone terminates. Such completion shall be at no additional cost to **CITY, BOARD**, or any other Participating Taxing Entity.

4.16 **DEVELOPER** shall comply with the Development Targets attached hereto as Exhibit D.

4.17 **DEVELOPER** shall comply with Chapter 35-504 and Appendix F of the City of San Antonio Unified Development Code regarding the development of the Project as those instruments were in effect on the date of the creation of the Zone by the **CITY's** City Council.

4.18 **DEVELOPER** understands that no Available Tax Increment Funds will be paid to Developer until a master drainage plan of the Project has been received and approved by **CITY**. Said approval shall not be unreasonably withheld, and approval shall be given if **DEVELOPER** has complied with all existing **CITY** written and adopted rules and ordinances.

## **V. DUTIES AND OBLIGATIONS OF CITY AND BOARD.**

5.1 Neither **CITY** nor **BOARD** shall sell or issue any bonds to pay or reimburse **DEVELOPER** or any third party for any improvements to the Zone Property performed under the Project Plan, Financing Plan or this Agreement.

5.2 **CITY** and **BOARD** hereby pledge all Available Tax Increment Funds as full reimbursement to **DEVELOPER**, up to the maximum total amount specified in this Agreement.

5.3 **CITY** and **BOARD** shall use their respective best efforts to cause each Participating Taxing Entity that levies real property taxes in Zone to levy and collect their ad valorem taxes due on the Zone Property and to contribute the Available Increment Funds towards reimbursing **DEVELOPER** for the construction of Public Infrastructure Improvements required under the Project Plan, Financing Plan and this Agreement.

5.4 **CITY** and **BOARD** shall use their respective best efforts to issue, or cause to be issued a Certificate of Completion for items satisfactorily brought to Completion by **DEVELOPER** in constructing this Project.

5.5 **CITY** and **BOARD** shall not unreasonably withhold approval on requests from **DEVELOPER** on matters under this Agreement.

## **VI. COMPENSATION TO DEVELOPER**

6.1 Upon completion of Public Infrastructure Improvements in each Phase of the Project, Developer shall submit to **CITY** a completed Contract Progress Payment Request (hereinafter "CPPR"), as detailed in Exhibit F hereof. Upon **CITY** review and approval, as evidenced by a written CPPR Approval issued by **CITY**, said CPPR shall be presented to **BOARD** for review and possible approval.

6.2 Upon **BOARD** approval and direction, **DEVELOPER** shall receive up to a maximum payment of \_\_\_\_\_ dollars (\$\_\_\_\_\_) for infrastructure improvements, plus permitted interest on eligible project costs, if any, not to exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_), up



to a maximum total payment of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), as full reimbursement for designing and constructing the Public Infrastructure Improvements required under the Project Plan, Financing Plan and this Agreement.

6.3 The sole source of the funds to reimburse **DEVELOPER** for Project Costs shall be the Available Tax Increment Funds levied and collected on the Zone Property and contributed by the **CITY** and other Participating Taxing Entities to the fund created and maintained by **CITY** for the purpose of implementing the public infrastructure improvements of the Project.

6.4 If Available Tax Increment Funds do not exist in an amount sufficient to make such payments in full when the payments are due to **DEVELOPER** under this Agreement, partial payments shall be made to **DEVELOPER**, and the remainder shall be paid as Available Tax Increment Funds become available. No fees, costs, expenses, or penalties shall be paid to **DEVELOPER** on any late payment.

6.5 If any payment to **DEVELOPER** is held invalid, ineligible, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the charter, codes, or ordinances of the **CITY**, then and in that event it is the intention of the parties hereto that such invalid, ineligible, illegal or unenforceable payment shall be repaid in full by **DEVELOPER** to **CITY** for deposit in the fund created and maintained by **CITY** for the purpose of implementing the public infrastructure improvements of the Project, and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable payment was never contained herein.

## VII. INSURANCE

7.1 **DEVELOPER's** financial integrity is of interest to **CITY**, therefore, subject to **DEVELOPER's** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **DEVELOPER**, or **DEVELOPER's** contractor, shall obtain and maintain in full force and effect during all Public Infrastructure Improvements required by the Project Plan and Financing Plan, and any extension hereof, at **DEVELOPER's** or **DEVELOPER's** contractor sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and amounts:

<u>Type</u>	<u>Amount</u>
(1) Worker's Compensation & Employer's Liability	Statutory \$500,000/\$500,000/\$500,000
(2) Comprehensive General Liability (Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations	Combined limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate or its equivalent in umbrella or excess liability coverage
(3) Business Automobile Liability (any auto, including employer's non-owned and hired auto coverage)	\$1,000,000 combined single limit per occurrence

7.2 **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by **CITY** and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by **CITY**, **DEVELOPER** shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof.

7.3 **DEVELOPER** agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance shall contain the following required provisions:

7.3.1 Name **CITY** and its officers, employees, and elected representatives as additional insured as respects operations and activities of, or on behalf of, the named insured performed under agreement with **CITY**, with the exception of the Workers' compensation policy;

7.3.2 Provide for an endorsement that the "other insurance" clause shall not apply to **CITY** where **CITY** is an additional insured shown on the policy;

7.3.3 Workers' compensation and employers' liability policy shall provide a waiver of subrogation in favor of **CITY**.

7.4 **DEVELOPER** shall notify **CITY** in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to **CITY** at the following address:

City of San Antonio  
Neighborhood Action Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

City of San Antonio  
City Clerk's Office  
P.O. Box 839966  
San Antonio, Texas 78283-3966

7.5 If **DEVELOPER** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, **CITY** may obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under this Agreement; however, procuring of said insurance by **CITY** is an alternative to other remedies **CITY** may have and is not the exclusive remedy for failure of **DEVELOPER** to maintain said insurance or secure such endorsement. In addition to any other remedies **CITY** may have upon **DEVELOPER's** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, **CITY** shall have the right to order **DEVELOPER** to stop work hereunder, and/or to withhold any payment(s) that become due to **DEVELOPER** hereunder until **DEVELOPER** demonstrates compliance with the requirements hereof.

7.6 Nothing herein contained shall be construed as limiting in any way the extent to which **DEVELOPER** may be held responsible for payments of damages to persons or property resulting from **DEVELOPER's** or its general contractor's performance of the work covered under this Agreement.

7.7 **DEVELOPER** shall also indemnify **CITY, BOARD, AND ALL OTHER PARTICIPATING TAXING ENTITIES** and their respective officials and employees from and against any and all claims, losses, damages, causes of actions, suits and liabilities arising out of **DEVELOPER's** and

**DEVELOPER's general contractor's actions related to the construction of the Public Infrastructure Improvements.**

7.8 **DEVELOPER** shall also require its general contractor or general contractors working on this Project to indemnify **CITY, BOARD**, and all other Participating Taxing Entities and their respective officials and employees from and against any and all claims, losses, damages, causes of actions, suits and liabilities arising out of their actions related to the performance of this Agreement, utilizing the same indemnification language contained herein, in its entirety.

**7.9 WORKERS COMPENSATION INSURANCE COVERAGE**

7.9.1 Definitions for this paragraph:

7.9.1.1 "Certificate of coverage" ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a Phase of the Project for the duration of the project.

7.9.1.2 "Duration of the project" - includes the time from the beginning of the work on the Project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

7.9.1.3 "Persons providing services on the project" ("subcontractor" in §406.096 of the Texas Labor Code) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

7.9.1.4 "Contractor" shall mean the general contractor or general contractors of Developer or their subcontractors.

7.9.1.5 "Governmental Entity" shall mean the City of San Antonio.

7.9.2 The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory requirements of Texas Labor Code, Section 401.011(44), for all employees of the Contractor providing services on the Project for the duration of the project.

7.9.3 The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

7.9.4 If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Phase of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

7.9.5 The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

7.9.5.1 a certificate of coverage, prior to that person beginning work on the Phase of the Project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

7.9.5.2 no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Phase of the Project.

7.9.6 The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

7.9.7 The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

7.9.8 The Contractor shall post on the Zone Property a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered and stating how a person may verify coverage and report lack of coverage.

7.9.9 **DEVELOPER** shall contractually require each person with whom it contracts to provide services on the Project, to:

7.9.9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory requirements of Texas Labor Code, Section 401.011(44), for all of its employees providing services on the Project for the duration of the applicable Phase of the Project;

7.9.9.2 provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the applicable Phase of the Project;

7.9.9.3 provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the applicable Phase of the Project;

7.9.9.4 obtain from each other person with whom it contracts, and provide to the Contractor:

7.9.9.4.1 a certificate of coverage, prior to the other person beginning work on the Project; and

7.9.9.4.2 a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the applicable Phase of the Project;

7.9.9.5 retain all required certificates of coverage on file for the duration of the applicable Phase of the Project and for one year thereafter;

7.9.9.6 notify the governmental entity in writing by certified mail or personal delivery within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

7.9.9.7 contractually require each person with whom it contracts, to perform as required by paragraphs 7.9.9.1 – 7.9.9.7, with the certificates of coverage to be provided to the person for whom they are providing services.

7.9.10 By signing this Agreement or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the applicable Phase of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

7.9.11 **DEVELOPER's** failure to comply with any of these provisions is a breach of contract by **DEVELOPER** that entitles the **CITY** to terminate this Agreement if **DEVELOPER** does not remedy the breach within ten (10) days after receipt of notice of breach from **CITY**.

## **VIII. DEFAULT AND TERMINATION**

8.1 In the event that **DEVELOPER** fails to commence construction of the Project, fails to complete construction of the Project, or fails to perform any other obligation pursuant to the terms of this Agreement, **CITY** and/or **BOARD** may terminate this Agreement if **DEVELOPER** does not take adequate steps to cure its failure within ninety (90) calendar days after receiving written notice from **CITY** and/or **BOARD** requesting the failure be cured. In the event of such default and as the exclusive remedy of **CITY** and/or **BOARD**, **DEVELOPER** shall return any payments under this Agreement for the construction of Public Infrastructure Improvements for any Phase under development at the time of the default within sixty (60) calendar days after receiving written notice from **CITY** and/or **BOARD** that **DEVELOPER** has defaulted on this Agreement; EXCEPT that no refund is due if **DEVELOPER**, with **CITY's** and **BOARD's** written consent, assigns its remaining obligations under this Agreement to a qualified party who is willing and capable of completing **DEVELOPER's** obligations under this Agreement, pursuant to Article XIII herein.

8.2 Notwithstanding paragraph 8.1 above, in the event **BOARD** and/or **DEVELOPER** fails to furnish **CITY** any documentation required in Article XII herein within thirty (30) business days following the written request for same, then **BOARD** and/or **DEVELOPER** shall be in default of this Agreement.

## **IX. INDEMNIFICATION**

9.1 **DEVELOPER** covenants and agrees to **FULLY INDEMNIFY and HOLD HARMLESS, CITY (and the elected officials, employees, officers, directors, and representatives of CITY), BOARD (and the officials, employees, officers, directors, and representatives of BOARD), and all other Participating Taxing Entities (and the elected officials, employees, officers, directors, and representatives of these Entities), individually or collectively, from and against any and all costs,**

claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon CITY, BOARD, and/or upon any other Participating Taxing Entities directly or indirectly arising out of, resulting from or related to DEVELOPER's negligence, willful misconduct or criminal conduct in its activities under this Agreement, including any such acts or omissions of DEVELOPER, any agent, officer, director, representative, employee, consultant or subconsultants of DEVELOPER, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this Agreement, all without, however, waiving any governmental immunity available to CITY, BOARD, and/or the other Participating Taxing Entities under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. DEVELOPER shall promptly advise CITY, BOARD, and the other Participating Taxing Entities in writing of any claim or demand against CITY, BOARD, and any other Participating Taxing Entity related to or arising out of DEVELOPER's activities under this Agreement and shall see to the investigation and defense of such claim or demand at DEVELOPER's cost to the extent required under the Indemnity in this paragraph. CITY, BOARD, and/or any other Participating Taxing Entity shall have the right, at their option and at their own expense, to participate in such defense without relieving DEVELOPER of any of its obligations under this paragraph.

9.2 It is the EXPRESS INTENT of the parties to this Agreement, that the INDEMNITY provided for in this paragraph, is an INDEMNITY extended by DEVELOPER to INDEMNIFY, PROTECT and HOLD HARMLESS CITY, BOARD, and the other Participating Taxing Entities from the consequences of the CITY's OWN NEGLIGENCE, the BOARD'S OWN NEGLIGENCE, and/or NEGLIGENCE of the other Participating Taxing Entities; provided however, that the INDEMNITY provided for in this paragraph SHALL APPLY only when the NEGLIGENT ACT of CITY, BOARD, or of any other Participating Taxing Entity is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and it shall have no application when the negligent act of CITY, BOARD, or of any other Participating Taxing Entity is the sole cause of the resultant injury, death, or damage. DEVELOPER further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF CITY (AND IN THE NAME OF CITY), BOARD (AND IN THE NAME OF BOARD), and any other Participating Taxing Entity (and in the name of any other Participating Taxing Entity) any claim or litigation brought against CITY (and its elected officials, employees, officers, directors and representatives), BOARD (and its officials, employees, officers, directors and representatives), and/or any Participating Taxing Entity (their officials, employees, officers, directors and representatives), in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

## **X. SITE INSPECTION**

10.1 DEVELOPER shall allow CITY and/or BOARD reasonable access to the Zone Property owned or controlled by DEVELOPER for inspections during and upon completion of construction of the Project and to documents and records necessary for CITY and/or BOARD to assess DEVELOPER's compliance with this Agreement.

## **XI. LIABILITY**

11.1 As between **CITY**, **BOARD** or any Participating Taxing Entity and **DEVELOPER**, **DEVELOPER** shall be solely responsible for compensation payable to any employee or contractor of **DEVELOPER**, and none of **DEVELOPER**'s employees or contractors will be deemed to be employees or contractors of **CITY**, **BOARD** or any Participating Taxing Entity as a result of the Agreement.

11.2 To the extent permitted by Texas law, no director, officer, employee or agent of **CITY**, **BOARD**, or of any other Participating Taxing Entity shall be personally responsible for any liability arising under or growing out of this Agreement.

## **XII. EXAMINATION OF RECORDS**

12.1 **CITY** reserves the right to conduct examinations, during regular business hours and following notice to **BOARD** and **DEVELOPER** by **CITY**, of the books and records related to this Agreement (including such items as contracts, paper, correspondence, copy, books, accounts, billings and other information related to the performance of **BOARD** and/or **DEVELOPER**'s services hereunder) no matter where books and records are located. **CITY** also reserves the right to perform any and all additional audit tests relating to **BOARD** and/or **DEVELOPER**'s services, provided that such audit tests are related to those services performed by **BOARD** and/or **DEVELOPER** for **CITY** under this Agreement. These examinations shall be conducted at the offices maintained by **BOARD** and/or **DEVELOPER**.

12.2 All applicable records and accounts of **BOARD** and/or **DEVELOPER**, together with all supporting documentation, shall be preserved in Bexar County, Texas, by **BOARD** and/or **DEVELOPER** throughout the term of this Agreement and for twelve (12) months after the termination of this Agreement, then transferred, at no cost to **CITY**, to **CITY** for retention. During this time, **CITY** may require that any or all of such records and accounts be submitted for audit to **CITY** or to a Certified Public Accountant selected by **CITY** within ten (10) days following written request for same.

12.3 Should **CITY** discover errors in internal controls or in record keeping associated with the Project, **BOARD** and/or **DEVELOPER** shall correct such discrepancies either upon discovery or within a reasonable period of time, not to exceed sixty (60) days after discovery, and notification by **CITY** to **BOARD** and/or **DEVELOPER** of such discrepancies. **BOARD** and/or **DEVELOPER** shall inform **CITY** in writing of the action taken to correct such audit discrepancies.

12.4 If it shall be determined as a result of such audit that **BOARD** and/or **DEVELOPER** has incorrectly stated the cost of the Public Infrastructure Improvements, then such incorrectly stated costs shall be immediately returned to **CITY** and become due and payable with interest at the Frost Bank Prime + 4% or the maximum legal rate under applicable law, whichever is lower, from the date the **CITY** paid such overcharges. In addition, if the audit determined that there were overcharges of more than two percent (2%) of the actual Project Cost for the year in which the discrepancy occurred, and **CITY** is entitled to a refund as a result of such overcharges, then **DEVELOPER** shall pay the cost of such audit.

## **XIII. NON-WAIVER**

13.1 Any provision of this Agreement may be amended or waived if done in writing and is signed by **CITY**, through an ordinance passed and approved by its City Council, **BOARD**, and **DEVELOPER**.

13.2 No course of dealing on the part of **CITY**, **BOARD**, or **DEVELOPER** nor any failure or delay by **CITY**, **BOARD**, or **DEVELOPER** in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power or privilege owing under this Agreement.

#### **XIV. ASSIGNMENT**

14.1 All covenants and agreements contained herein by **CITY** and/or **BOARD** shall bind their successors and assigns and shall inure to the benefit of **DEVELOPER** and their successors and assigns.

14.2 **CITY** and/or **BOARD** may assign their rights and obligations under this Agreement, to any governmental Entity without prior consent of **DEVELOPER**. If **CITY** and/or **BOARD** assigns their rights and obligations under this Agreement then **CITY** and/or **BOARD** will send **DEVELOPER** written notice of such assignment within fifteen (15) days of such assignment.

14.3 **DEVELOPER** may sell or transfer its rights and obligations under this Agreement only with written consent of **CITY** as evidenced by an ordinance passed and approved by its City Council and of **BOARD** (with such consent not being unreasonably withheld, conditioned, or delayed) when a qualified purchaser or assignee specifically agrees to assume all of the obligations of **DEVELOPER** under this Agreement. This restriction on **DEVELOPER's** rights to sell or transfer is subject to the right to assign as provided in Paragraph 14.6 below.

14.4 Any work or services contracted herein shall be contracted only by written contract or agreement and, unless **CITY** grants specific waiver in writing, shall be subject by its terms, insofar as any obligation of **CITY** is concerned, to each and every provision of this Agreement. Compliance by **DEVELOPER's** subcontractors with this Agreement shall be the responsibility of **DEVELOPER**.

14.5 **CITY** shall in no event be obligated to any third party, including any contractor or consultant of **DEVELOPER**, for performance of work or services under this Agreement, except as set forth in Section 14.9 of this Agreement.

14.6 Any restrictions herein on the transfer or assignment of **DEVELOPER's** interest in this Agreement shall not apply to and shall not prevent the assignment of this Agreement to any corporation or other entity with which **DEVELOPER** may merge or consolidate or that may succeed to a controlling interest in the business of **DEVELOPER**; nor shall the foregoing apply to or prevent **DEVELOPER** from assigning the proceeds of this Agreement to a lending institution or other provider of capital in order to obtain financing for the Project. In no event, however, shall **CITY** be obligated in any way to the aforementioned financial institution or other provider of capital. This Article does not intend to require **DEVELOPER** to obtain consent of **CITY** for the sale of land to developers or lots to builders for the construction of homes, apartments or commercial sites pursuant to the Project Plan.

14.7 Each transfer or assignment to which there has been consent, pursuant to paragraph 14.3 above, shall be by instrument in writing, in form reasonably satisfactory to **CITY**, and shall be executed by the transferee or assignee who shall agree in writing for the benefit of **CITY** and **BOARD** to be bound by and to perform the terms, covenants and conditions of this Agreement. Four (4) executed copies of such written instrument shall be delivered to **CITY**. Failure to first obtain in writing **CITY's** consent, or failure to comply with the provisions herein contained, shall operate to prevent any such transfer or assignment from becoming effective.



14.8 Should **CITY** approve the assignment or transfer of this Agreement, as provided in paragraph 14.6 above, **DEVELOPER** shall be released from such duties and obligations.

14.9 Except as set forth in paragraph 14.3, the receipt by **CITY** of services from an assignee of **DEVELOPER** shall not be deemed a waiver of the covenant in this Agreement against assignment or an acceptance of the assignee or a release of **DEVELOPER** from further observance or performance by **DEVELOPER** of the covenants contained in this Agreement. No provision of this Agreement shall be deemed to have been waived by **CITY** unless such waiver is in writing and is approved by City Council of the **CITY** in the form of a duly passed ordinance.

## **XV. CONFLICT OF INTEREST**

15.1 **BOARD** and **DEVELOPER** each acknowledges that the Charter of **CITY** and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the **CITY** or any **CITY** agency such as **CITY**-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with **CITY** or in the sale to **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10%) percent or more of the fair market value of the business entity; or ten (10%) percent or more of the voting stock or shares of the business entity; or a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

15.2 **BOARD** and **DEVELOPER** each warrant and certify, and this Agreement is made in reliance thereon, that they, their officers, employees and agents are neither officers nor employees of **CITY** as prohibited above. **BOARD** and **DEVELOPER** each further warrant and certify that each has tendered to **CITY** a Discretionary Contracts Disclosure Statement in compliance with **CITY's** Ethics Code.

## **XVI. ENTIRE AGREEMENT**

16.1 This written Agreement, embodies the final and entire agreement between the parties hereto and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

16.2 The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that if there is a conflict between an exhibit and a provision of this Agreement, the provision of this Agreement shall prevail over the exhibit.

## **XVII. CHANGES AND AMENDMENTS**

17.1 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by **CITY**, **BOARD** and **DEVELOPER** and evidenced by passage of a subsequent **CITY** ordinance, as to **CITY's** approval.

17.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable to **BOARD** and **DEVELOPER's** services hereunder may occur during the

term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto and shall become a part hereof as of the effective date of the rule, regulation or law.

#### **XVIII. SEVERABILITY**

18.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the charter, code, or ordinances of **CITY**, then and in that event it is the intent of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intent of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a similar clause or provision as may be possible, legal, valid and enforceable.

#### **XIX. INDEPENDENT CONTRACTORS**

19.1 It is expressly understood and agreed by all parties hereto that in performing their services hereunder, **BOARD** and **DEVELOPER** at no time will be acting as agents of the **CITY** and that all consultants or contractors engaged by **BOARD** and/or **DEVELOPER** respectively shall be independent contractors of **BOARD** and/or **DEVELOPER**. The parties hereto understand and agree that **CITY** shall not be liable for any claims that may be asserted by any third party occurring in connection with services performed by **BOARD** and/or **DEVELOPER** respectively under this Agreement unless any such claims are due to the fault of **CITY**.

19.2 The parties hereto further understand and agree that no party has authority to bind the others or to hold out to third parties that it has the authority to bind the others.

#### **XX. LEGAL AUTHORITY**

20.1 Each persons executing this Agreement on behalf of the **CITY**, **BOARD** and **DEVELOPER**, represents, warrants, assures and guarantees that he has full legal authority to (i) execute this Agreement on behalf of **CITY**, **BOARD** and/or **DEVELOPER**, respectively, and (ii) to bind **CITY**, **BOARD** and/or **DEVELOPER** to all of the terms, conditions, provisions and obligations herein contained.

#### **XXI. VENUE AND GOVERNING LAW**

21.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in Bexar County, Texas.

#### **XXII. TAXES**

22.1 **DEVELOPER** shall pay, on or before their respective due dates, to the appropriate collecting authority all Federal, State, and local taxes and fees that are now or may hereafter be levied upon the

Zone Property or upon **DEVELOPER** or upon the business conducted on the Zone Property, or upon any of **DEVELOPER's** property used in connection therewith, including employment taxes; and **DEVELOPER** shall maintain in current status all federal State, and local licenses and permits required for the operation of the business conducted by **DEVELOPER**.

### XXIII. PARTIES' REPRESENTATIONS

23.1 This Agreement has been jointly negotiated by the **CITY**, **BOARD** and **DEVELOPER** and shall not be construed against a party because that party may have primarily assumed responsibility for the drafting of this Agreement.

### XXIV. NOTICE

24.1 Any notice sent under this Agreement shall be written and mailed with sufficient postage, sent by certified mail, return receipt requested, documented facsimile or delivered personally to an officer of the receiving party at the following addresses:

**CITY**

City of San Antonio  
City Clerk's Office  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
FAX: (210) 207- 7032

**ZONE BOARD**

\_\_\_\_\_  
\_\_\_\_\_  
San Antonio, TX \_\_\_\_\_  
FAX: (210) \_\_\_\_\_

**DEVELOPER**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
FAX: ( ) \_\_\_\_\_

24.2 Each party may change its address by written notice in accordance with this Article. Any communication delivered by facsimile transmission shall be deemed delivered when receipt of such transmission is received if such receipt is during normal business hours or the next business day if such receipt is after normal business hours. Any communication so delivered in person shall be deemed received when receipted for by or actually received by an officer of the party to whom the communication is properly addressed. All notices, requests or consents under this Contract shall be (a) in writing, (b) delivered to a principal officer or managing entity of the recipient in person, by courier or mail or by facsimile, telegram, telex, cablegram or similar transmission, and (c) effective only upon actual receipt by such person's business office during normal business hours. If received after normal business hours, the notice will be considered to have been received on the next business day after such delivery. Whenever any notice is required to be given by applicable law or this Contract, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Each party shall have the right from time to time and at any time to change its address by giving at least 15 days' written notice to the other party.

## XXV. CAPTIONS

25.1 All captions used herein are only for the convenience of reference and shall not be construed to have any effect or meaning as to the agreement between the parties hereto.

## XXVI. COMPLIANCE WITH SBEDA AND EEO POLICIES

26.1 **BOARD** and **DEVELOPER** are each hereby advised that it is the policy of **CITY** that business enterprises eligible as Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts. Except for those Public Infrastructure Improvements commenced prior to the creation of the Zone, **BOARD** and **DEVELOPER** each agrees for itself that **BOARD** and **DEVELOPER** will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. **BOARD** and **DEVELOPER** each further agrees that with respect to the remaining Public Infrastructure Improvements **BOARD** and **DEVELOPER** will each make a good faith effort to comply with the applicable terms and provisions of **CITY's** Non-Discrimination Policy, **CITY's** Small, Minority or Woman-owned Business Advocacy Policy and **CITY's** Equal Opportunity Affirmative Action Policy, these policies being available in **CITY's** Department of Economic Development, Division of Internal Review and the **CITY's** Office of the City Clerk.

26.2 **BOARD** and **DEVELOPER** each agrees that if material deficiencies in any aspect of its Small Business Economic Development Advocacy utilization plan are found as a result of a review or investigation conducted by **CITY's** Department of Economic Development, **BOARD** and/or **DEVELOPER** will be required to submit a written report to **CITY's** Department of Economic Development. **BOARD** and/or **DEVELOPER** will also be required to submit a supplemental Good Faith Effort Plan (GFEP) indicating efforts to resolve any deficiencies. If a GFEP is denied by **CITY's** Department of Economic Development based on reasonable and published criteria, it will constitute failure to satisfactorily resolve any deficiencies by **BOARD** and/or **DEVELOPER**. Failure to obtain an approved GFEP within ninety (90) days of notice to the offending party that includes the specific criteria that have not been met shall constitute a default and result in a penalty on **BOARD** and/or **DEVELOPER** of \$1,000 per day as liquidated damages for the default until all deficiencies are resolved. Failure to cure all deficiencies within another ninety (90) days of the date the penalty is initially assessed constitutes a further (additional) condition of default by **BOARD** and/or **DEVELOPER** and which can, at the option of the Director of the Department of Economic Development, result in termination of this Agreement.

## XXVII. WAGES

With respect to the Public Infrastructure Improvements commenced after the creation of the Zone:

27.1 **BOARD** and **DEVELOPER** shall pay wages that are not less than the minimum wages required by Federal and State statutes and **CITY** ordinances to persons employed in their operations hereunder, as set forth in Exhibit E.

27.2 **DEVELOPER** shall stipulate in all construction contracts with its general contractor or general contractors engaged in furtherance of the execution of this Agreement that said general contractor or general contractors pay not less than the prevailing wage rate for its workers and shall attach as an exhibit to said contracts a copy of Exhibit E.

27.3 **DEVELOPER** or its general contractor or general contractors who pays less than the prevailing wage rate to its workers shall pay to **CITY** sixty dollars (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in this Agreement. **DEVELOPER** shall stipulate in all contracts with general contractor or general contractors engaged by **DEVELOPER** in furtherance of the execution of this Agreement that contractor is subject to this \$60.00 penalty if contractor fails to pay said prevailing wage rates to its workers.

27.4 In accordance with Chapter 2258, Texas Gov't Code, **CITY** shall be entitled to withhold payment from **DEVELOPER** under this Agreement to satisfy this penalty, even if the party incurring the penalty is a general contractor of **DEVELOPER**. If **CITY** withholds payment from **DEVELOPER** as a result of a general contractor's violation, **DEVELOPER** may withhold payment from the general contractor in accordance with Chapter 2258. Further, release or disbursement of funds withheld as a penalty hereunder shall be governed by Chapter 2258.

## **XXVIII. TERM**

28.1 The term of this Agreement shall commence on the Effective Date and end on the date which is the earlier to occur of the following: (i) the date **DEVELOPER** receives the final payment for completing the Project; or (ii) the date this Agreement is terminated as provided in Article VIII; provided that all existing warranties on the Project shall survive termination of this Agreement; or (iii) the date the term of the Zone expires.

## **XXIX. LITIGATION EXPENSES**

29.1 Under no circumstances will the Available Tax Increment Funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against **CITY** or any other public entity.

29.2 During the term of this Agreement, if **BOARD** and/or **DEVELOPER** files and/or pursues an adversarial proceeding against **CITY** regarding this Agreement without first engaging in good faith mediation of the dispute, then, at **CITY's** option, all access to the funding provided for hereunder may be deposited with a mutually acceptable escrow agent that will deposit such funds in an interest bearing account.

29.3 **BOARD** and/or **DEVELOPER**, at **CITY's** option, could be ineligible for consideration to receive any future funding while any adversarial proceedings regarding this Agreement against **CITY** remains unresolved if it was initiated without first engaging in good faith mediation of the dispute.

29.4 For purposes of this Article, "adversarial proceedings" include any cause of action regarding this Agreement filed by **BOARD** and/or **DEVELOPER** in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternate Dispute Resolution proceedings, including arbitration.

**IN WITNESS THEREOF**, the parties hereto have caused this instrument to be duly executed this \_\_\_\_\_ day of \_\_\_\_\_.

**CITY OF SAN ANTONIO**

\_\_\_\_\_  
Terry M. Brechtel  
CITY MANAGER

**DEVELOPER**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_

**BOARD OF DIRECTORS,**  
**REINVESTMENT ZONE NUMBER** \_\_\_\_\_

\_\_\_\_\_  
Name:  
Title: Presiding Officer, Board of Directors

Approved as to form: \_\_\_\_\_  
City Attorney

**EXHIBIT A**

Project Site

**EXHIBIT B**

Public Infrastructure Improvements

**EXHIBIT C**

Construction Schedule

**EXHIBIT D**

Development Targets

**EXHIBIT E**

Prevailing Wage Rate Charge

**EXHIBIT F**

Form or Requirements of Contract Progress Payment Request